

Rule 608. A Witness's Character for Truthfulness or Untruthfulness.

(a) **Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

(b) **Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

(1) the witness; or

(2) another witness whose character the witness being cross-examined has testified about.

By testifying on another matter, a witness does not waive any privilege against self-incrimination for testimony that relates only to the witness's character for truthfulness.

Comment to 2012 Amendment

This rule has been amended to conform to Federal Rule of Evidence 608, including changing two references to "credibility" to "character for truthfulness" in subsection (b). Additionally, the language of Rule 608 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent in the restyling to change any result in any ruling on evidence admissibility.

Comment to Original 1977 Rule

State *ex rel.* Pope v. Superior Court (Grier), 113 Ariz. 22, 545 P.2d 946 (1976), is consistent with and interpretative of Rule 608(b).

Paragraph (a) — Opinion and reputation evidence of character.

608.a.015 A party may attack the credibility of a witness using opinion testimony only about the witness's character for truthfulness or untruthfulness.

State v. Nordstrom, 200 Ariz. 229, 25 P.3d 717, ¶ 76 (2001) (trial court allowed witness to give opinion that another witness was not trustworthy or honest when drinking heavily or using drugs; trial court properly precluded witness from giving opinion that the other witness had propensity for violence, being hot-tempered, and taking advantage of friends because those factors did not have bearing on character for truthfulness or untruthfulness,).

608.a.030 A party may not impeach a witness by vague or speculative matters.

State v. Hoskins, 199 Ariz. 127, 14 P.3d 977, ¶¶ 70–71 (2001) (defendant sought to cross-examine state's witness about another state's witness's reputation as "braggart" and "boaster"; court held proposed testimony was vague, speculative, and immaterial, thus trial court did not err in precluding that testimony).

Paragraph (b) — Specific instances of conduct.

608.b.010 The trial court may allow impeachment or rehabilitation with specific instances of conduct if it concludes that the conduct is probative of truthfulness.

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State v. Rienhardt, 190 Ariz. 579, 951 P.2d 454 (1997) (on cross-examination, defendant elicited inconsistent statement from state's key witness; trial court allowed state to introduce prior consistent statements on re-direct; court held such statements probative of truthfulness).

State v. Gilfillan, 196 Ariz. 396, 998 P.2d 1069, ¶¶ 24–28 (Ct. App. 2000) (27-year-old defendant held knife to throat of 11-year-old victim, bound her wrists and ankles, performed oral sex on her, digitally penetrated her vagina, attempted penile penetration, and forced her to perform oral sex on him; DNA from sperm matched defendant's DNA; trial court did not abuse discretion in concluding defendant failed to establish that victim had made prior false accusations of sexual misconduct).

State v. Uriarte, 194 Ariz. 275, 981 P.2d 575, ¶¶ 20, 24 (Ct. App. 1998) (defendant was charged with child molestation, sexual conduct with minor, and public sexual indecency involving his 12-year-old sister-in-law; defendant's wife testified; trial court did not abuse discretion in admitting evidence that defendant's wife threatened victim and victim's mother with death if defendant was convicted).

608.b.020 The trial court should preclude impeachment with specific instances of conduct if it concludes that the conduct is not probative of truthfulness.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 52–53 (2006) (in February 1999, victims were killed; victims' daughter testified she saw defendant working at her parents' house in July or August 1998; defendant sought to impeach her with defendant's Arizona Department of Corrections records that showed he was in prison from May 1998 through January 1999; court held that AzDOC records did not deal with daughter's conduct, thus they did not meet requirements of Rule 608).

State v. Murray, 184 Ariz. 9, 30–31, 906 P.2d 542, 563–64 (1995) (although witness admitted he lied under oath on prior occasion, because it appeared he was merely mistaken in his testimony and thus never intentionally misled anyone, trial court concluded prior occasion was not probative of truthfulness).

State v. Prince, 160 Ariz. 268, 273, 772 P.2d 1121, 1126 (1989) (because pointing gun at person is not probative of truthfulness, trial court properly precluded this line of questioning).

State v. Oliver, 158 Ariz. 22, 31, 760 P.2d 1071, 1080 (1988) (evidence of sexual misconduct is not probative of truthfulness).

State v. Woods, 141 Ariz. 446, 449–50, 687 P.2d 1201, 1204–05 (1984) (trial court did not abuse discretion in concluding unauthorized cashing of check was not probative of truthfulness).

State v. Doody, 187 Ariz. 363, 367, 375, 930 P.2d 440, 444, 452 (Ct. App. 1996) (because defendant made no showing prior burglaries, and conspiracy to commit murder and armed robbery (the Cruz offenses) were probative of truthfulness, trial court properly precluded that evidence).

608.b.060 A party may not ask a witness on cross-examination about specific instances of conduct that are not true or that the party would not be able to prove by admissible evidence.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 52–53 (2006) (in February 1999, victims were killed; victims' daughter testified she saw defendant working at her parents' house in July or August 1998; defendant sought to impeach her with defendant's Arizona Department of Cor-

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rections records that showed he was in prison from May 1998 through January 1999; trial court invited defendant's attorney to offer AzDOC records in evidence, but defendant's attorney did not do so; because defendant's attorney failed to offer AzDOC records in evidence, trial court did not abuse discretion in ruling that defendant's attorney could not use those records during cross-examination absent their admission in evidence).

State v. Madsen, 125 Ariz. 346, 349–50, 609 P.2d 1046, 1049–50 (1980) (prosecutor asked defendant's father if he had ever had to call police because of difficulties between defendant and his wife, and defendant's father denied ever having done so; state's witness who could have contradicted father's denial had already left; because state's witness could have testified, prosecutor asked question in good faith; because prosecutor did not pursue matter further, there was no prejudice).

State v. Holsinger, 124 Ariz. 18, 20–22, 601 P.2d 1054, 1056–58 (1979) (prosecutor asked witness, "Did I tell you that Jeannie Holsinger had a long criminal record and that's why I wanted to get her?"; because question implied that defendant had criminal when in fact she did not, and thus question implied existence of factual predicate that prosecutor could not support by evidence, question was improper, and because mere asking of question prejudiced defendant, court reversed conviction).

608.b.065 If the testimony of two witnesses is contradictory and that could be the result of poor ability or opportunity to perceive, faulty memory, mistake, or poor ability to relate what happened, asking one witness in those situations whether the other witness is lying is improper, but when the only possible explanation for the inconsistent testimony is deceit or lying, or when one witness has opened the door by testifying about the veracity of the other witness, asking one witness whether the other witness is lying may be proper.

State v. Canion, 199 Ariz. 227, 16 P.3d 788, ¶¶ 40–44 (Ct. App. 2000) (defendant claimed prosecutor acted improperly by asking him on cross-examination about differences between his testimony and officer's testimony and asking him to comment on officer's credibility; court held that, even if it assumed prosecutor's questions constituted misconduct, it was not so pervasive or pronounced that trial lacked fundamental fairness).

State v. Morales, 198 Ariz. 372, 10 P.3d 630, ¶¶ 8–15 (Ct. App. 2000) (defendant's testimony directly contradicted officers' testimony, prosecutor asked defendant whether officers were lying, and defendant did not object; court held that, even assuming prosecutor's question was improper, error was not fundamental).

NOTE: Impeachment and rehabilitation evidence showing a witness's bias, prejudice, or interest is admissible under Rule 401; cases are annotated under Rule 401 Impeachment Cases.

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